

Application No.: 10/673,258Docket No.: 4635-002REMARKS

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1-13 and 15-17 are pending in the application. Claim 14 has been cancelled without prejudice or disclaimer. The remaining claims are unchanged notwithstanding the Examiner's art rejections. The Abstract has been rewritten to be compliant with commonly accepted US patent practice. No new matter has been introduced through the foregoing amendments.

The Examiner's decision to withdraw claims 4-8 and 11-13 from consideration for allegedly being in improper multiple dependent form is *traversed*, because the multiple dependencies of original claims 4-8 and 11-13 have been removed by the Preliminary Amendment filed September 30, 2004. Accordingly, claims 4-8 and 11-13 are in proper dependent form and consideration of these claims is respectfully requested.

The Examiner's rejection of all remaining claims as being anticipated by *Robles* (U.S. Patent No. 6,004,306) is *traversed*, because the reference fails to teach or disclose each and every element of the rejected claims.

For example, as to independent claim 1, *Robles* clearly fails to teach or disclose, at least, the limitation that "said side flap fixing parts are located on a side inner toward said diaper body than said joint parts." The *Robles* reference discloses, at best, two joint parts or two fixing parts at inner edges 80 of waist panel 36 and thigh panel 38. See, e.g., FIG. 1 of *Robles*. The reference does not appear to teach or disclose both fixing and joint parts as presently claimed. If the Examiner is reading the inner edge of waist panel 36 (FIG. 1 of *Robles*) on one of the claimed fixing and joint parts, and the inner edge of thigh panel 38 (FIG. 1 of *Robles*) on the other, the so-interpreted *Robles* reference would still fail to teach that such "fixing and joint parts" are inwardly displaced one from

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another as presently claimed, because the inner edges 80 of panels 36 and 38 (FIG. 1 of *Robles*) are longitudinally aligned.

Accordingly, Applicant respectfully submit that claim 1, as well as claims 2-13 depending therefrom, are not anticipated by *Robles*.

As to claim 3, it is unclear from the language of the Office Action as to how the applied reference teaches or discloses the claimed feature that "said first joint part and said second joint part have a same length." Clarification is respectfully requested.

As to claims 9-10, Applicants respectfully disagree with the Examiner's conclusion that *Robles* teaches the claimed feature that "a length of said first joint part is shorter/longer than a length of said second joint part." The Examiner appears to rely on the theory of inherency which requires "a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis added). In this case, the edges 80 of *Robles* are bonded in the exact same manner and do not necessarily have different lengths. Further, even if the edges 80 of *Robles* necessarily have different lengths, one length must be necessarily longer than the other, and as a result only one, not both, of claims 9-10 may be inherently anticipated.

As to independent claim 15, *Robles* clearly fails to teach or disclose, at least, the claimed method of adjusting fitness... by adjusting a length of first and second joint parts. The reference at best teaches providing better fit by having extensible side panels. See, e.g., *Robles* at column 2, lines 1-4. Adjustment of the lengths of the joint parts, i.e., edges 80, is neither disclosed, taught nor suggested by *Robles* to be suitable for the purpose of improving fit. Accordingly, Applicant respectfully submit that claim 15 is not anticipated by *Robles*.

As to independent claim 16, it is unclear from the language of the Office Action as to how

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the applied reference teaches or discloses the claimed method of adjusting fitness... by adjusting a width of first and second joint parts. Clarification is respectfully requested. In addition, Adjustment of the widths of the joint parts, i.e., edges 80, is not deemed disclosed, taught or suggested by *Robles* to be suitable for the purpose of improving fit. Accordingly, Applicant respectfully submit that claim 16 is not anticipated by *Robles*.

As to independent claim 17, Applicants respectfully disagree with the Examiner's allegation that *Robles* teaches the claimed method of adjusting fitness... by adjusting a position of first and second joint parts. As discussed above, *Robles* teaches providing better fit by having extensible side panels rather than by adjusting a position of first and second joint parts as presently claimed. In addition, the reference is silent on whether the attachment of edges 80 to the outer surface of backsheet 26 or the inner surface of topsheet 24 would at all have any fitting effect. Therefore, a person of ordinary skill in the art would not recognize that *Robles* discloses either explicitly or inherently the method of claim 17.

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

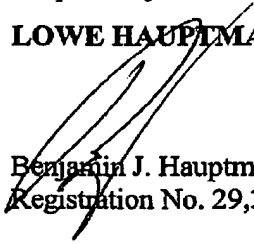
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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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